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No. 03-1388

In the Supreme Court of the United States

DOUGLAS SPECTOR, ET AL.,
Petitioners,

v.

NORWEGIAN CRUISE LINE LTD.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF OF TEXAS, ARIZONA, CALIFORNIA, ILLINOIS, MASSACHUSETTS, MISSOURI, UTAH, AND WASHINGTON AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether and to what extent Title III of the Americans with Disabilities Act (ADA) applies to companies that operate foreign-flag cruise ships in United States waters?

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INTEREST OF *AMICI CURIAE*

Amici States have a strong interest in protecting their citizens with disabilities and ensuring that Title III of the ADA, 42 U.S.C. §12181 *et seq.*, is properly enforced within United States territory—especially when its nonenforcement not only denies those citizens their right to freedom from disability-based discrimination aboard a popular type of common carrier, but indeed puts their lives at risk in the event of an emergency. Given the significant number of citizens with disabilities who take cruise vacations each year,[1] the States have a particular interest in ensuring that foreign-flag ships that voluntarily subject themselves to United States law by docking at American ports and picking up American passengers are subject to Title III.

The Attorney General of Texas, and the attorneys general of *amici* States, are committed to vigilantly defending the rights of citizens with disabilities within the several States. It is the express policy of the State of Texas "to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public

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1. In 2002, Americans with disabilities spent $13.6 billion on travel, and 12% of those surveyed in a recent study had taken a cruise vacation within the preceding five years. Deborah Alexander, *Vacationing with Disabilities: New Travel Market Is Opening Up*, OMAHA WORLD HERALD, May 23, 2003, at 2D; *see also* Lynnley Browning, *From Beaches to Cities, Efforts to Serve Disabled Travelers*, N.Y. TIMES, Oct. 19, 2003, §3, at 9 (noting that approximately 11 million Americans with disabilities take cruises and engage in other forms of travel once or more each year). According to the International Council of Cruise Lines, 80 percent of the cruise-ship industry's economic impact was concentrated in ten states including Florida, California, New York, Alaska, Texas, and Washington. Press Release, Cruise Industry Economic Impact Topped $25 Billion in 2003 (August 24, 2004), *at* http://www.iccl.org/pressroom/pressrelease.cfm?whichrel=56 pressrelease.cfm?whichrel=56 (last visited Nov. 12, 2004).

facilities available within the state." TEX. HUM. RES. CODE §121.001. This policy statement and the substantive protections that follow it in the Texas Human Resources Code reflect Texas's commitment to its citizens with disabilities in a way that parallels both the United States's commitment embodied in Title III and the similar commitments of other States.[2]

SUMMARY OF THE ARGUMENT

Norwegian Cruise Line Ltd. (NCL) operates cruise ships that pick up American vacationers from American ports, and it also sells tickets for its cruises from offices on American soil. The plain text of the ADA protects Americans traveling on common carriers such

2. *See* ALA. CODE §21-7-3; ALASKA STAT. §18.80.200; ARIZ. REV. STAT. §41-1492.02; ARK. CODE ANN. §20-14-303; CAL. CIV. CODE §54.1; COLO. REV. STAT. §24-34-601; CONN. GEN. STAT. §46a-7; DEL. CODE ANN. tit. 6, §4503; FLA. STAT. ANN. §760.07; GA. CODE ANN. §30-4-2; HAW. REV. STAT. §489-3; IDAHO CODE §56-703; 775 ILL. COMP. STAT. 5/5-102; IND. CODE §22-9-1-2; IOWA CODE §216.7; KAN. STAT. ANN. §44-1009; KY. REV. STAT. ANN. §344.120; LA. REV. STAT. ANN. §49:146; ME. REV. STAT. ANN. tit. 5, §459; MD. ANN. CODE art. 49B, §5; MASS. GEN. LAWS ch. 272, §98; MICH. COMP. LAWS §37.1302; MINN. STAT. §256C.02; MISS. CODE ANN. §43-6-5; MO. REV. STAT. §213.065; MONT. CODE ANN. §49-2-304; NEB. REV. STAT. §20-132; NEV. REV. STAT. 651.070; N.H. REV. STAT. ANN. §155:39-b; N.J. STAT. ANN. §10:5-29; N.M. STAT. ANN. §28-7-3; N.Y. EXEC. LAW §296; N.C. GEN. STAT. §168-3; N.D. CENT. CODE §14-02.4-0; OHIO REV. CODE ANN. §4112.02; OKLA. STAT. tit. 25, §1402; OR. REV. STAT. §659A.142; 43 PA. CONS. STAT. §955; R.I. GEN. LAWS §§11-24-2, 42-87-1, & 42-112-1; S.C. CODE ANN. §43-33-20; S.D. CODIFIED LAWS §20-13-23.1; TENN. CODE ANN. §62-7-112; UTAH CODE ANN. §26-30-1; VT. STAT. ANN. tit. 9, §4500; VA. CODE ANN. §51.5-44; WASH. REV. STAT. §49.60.215; W.VA. CODE §5-15-4; WIS. STAT. §101.13; WYO. STAT. ANN. §35-13-201; *see also* D.C. CODE ANN. §2-1402.31; 19 GUAM CODE ANN. §2115.

as cruise ships, and this Court should give full effect to that unambiguous congressional intent.

In concluding that Title III of the ADA is inapplicable to foreign-flag cruise ships and the companies that operate them within United States territory, the court of appeals overlooked specific statutory language, this Court's case law, legislative history, and two federal agencies' opinions. In addition to these authorities, the absence of any other federal law aimed at preventing disability-based discrimination by cruise-ship operators further confirms Title III's applicability.

It is fully within Congress's authority to regulate foreign-flag cruise ships departing from United States ports and sailing in United States waters, and Congress chose to exercise that authority in Title III. The provision's plain language demonstrates Congress's intent to apply the statute to common carriers such as cruise ships. Although the court of appeals correctly observed that Congress is generally presumed not to intend to apply federal law outside of United States territory or to regulate the internal affairs of foreign vessels, the application of Title III to foreign-flag cruise ships in United States territory is entirely consistent with both of these presumptions.

The Court's opinions show that the safety and equal treatment of fee-paying vacationers do not fall within the scope of the "internal management and affairs" of a foreign ship—a term of art that refers to relations between a ship's crew and its owner. This Court's recognition of "delicate issues of international relations" that the court of appeals identifies likewise arises only in this narrow labor-law context, and it provides no basis for applying a presumption against Title III's applicability in the common-carrier setting.

Even if the Court were to broaden the meaning of "internal management and affairs" of a foreign ship to encompass the

conduct and conditions underlying some of Petitioners' claims, their other claims under Title III would not fall within that phrase's purview. The sale of tickets on United States soil has no connection to matters occurring aboard a ship, and issues concerning only whether a ship's physical structure permits citizens with disabilities to access facilities such as public restrooms and decks used for emergency evacuation have nothing to do with a crew's duties or a ship's operations.

The court of appeals also erred in concluding that this case involves the potential for extraterritorial application of federal law. Petitioners' claims challenge only NCL's conduct on American soil and the condition and onboard procedures of its ships sailing in United States waters. Additionally, intrinsic limitations on Title III's enforcement ensure that the statute will not be applied to cruise ships unreasonably, in a way that contravenes foreign or international design standards. Accordingly, the Court should reverse the court of appeals's judgment and hold that Title III applies to foreign-flag cruise ships within the United States's territorial waters.

ARGUMENT

I. FOREIGN-FLAG CRUISE SHIPS FALL WITHIN THE SCOPE OF TITLE III.

Title III forbids discrimination against Americans with disabilities aboard common carriers and in other places of public accommodation. In reaching the erroneous conclusion that the statute is inapplicable to foreign-flag cruise ships in United States waters, the court of appeals overlooked several dispositive sources of law: the opening provisions of the ADA, which express Congress's clear intent for the Act to apply broadly to protect Americans with disabilities from discrimination; the relevant legislative history, which reflects an intent to apply Title III's protections to the full gamut of "public accommodations"; and two

federal agencies' opinions, which conclude that Title III applies to foreign-flag cruise ships.

Moreover, the court of appeals's holding that Title III does not apply to foreign ships that pick up American passengers from American soil creates an unintended loophole in federal law. If the court of appeals's opinion stands, a major class of common carriers will be able to reap the substantial economic benefits of collecting fares from Americans with disabilities while remaining free to disregard those citizens' rights to accessibility, safety, and freedom from discriminatory pricing practices.

A. Title III Applies to Common Carriers That Sail in American Waters, Dock at American Ports, and Pick Up American Passengers.

At the outset of its analysis, the court of appeals recognized two foundational principles. First, it noted that by voluntarily sailing into the territorial limits of the United States, a foreign ship subjects itself to the laws and jurisdiction of the United States. *Spector v. Norwegian Cruise Line Ltd.*, 356 F.3d 641, 644 (CA5 2004), *cert. granted*, 125 S.Ct. 26 (U.S. Sept. 28, 2004) (citing *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 142 (1957)). Second, it observed that only clear congressional intent will support the exercise of jurisdiction over such a ship. *Ibid.* (citing *Benz*, 353 U.S., at 147). In other words, Congress has full authority to exercise jurisdiction over foreign-flag cruise ships in American waters. The question is whether it has chosen to do so. The text of Title III, this Court's opinions, the relevant legislative history, and opinions issued by the United States Departments of Justice (DOJ) and Transportation (DOT) establish that lack of specific language about cruise ships does not defeat Congress's clear intent about the breadth of Title III's reach.

1. The plain text of Title III applies to cruise ships.

The starting point of statutory analysis is the text of the statute. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (explaining that the first step in analyzing a statute "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute" and that the analysis ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent'") (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989)).

By its terms, Title III applies to common carriers: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of *specified public transportation* services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. " 42 U.S.C. §12184(a) (emphasis added). "[S]pecified public transportation," in turn, is expressly defined as "transportation by bus, rail, *or any other conveyance* (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis"). *Id.* §12181(10) (emphasis added).

A cruise ship, of course, is a "conveyance" that "provides the general public with . . . service . . . on a regular and continuing basis." *Ibid.* And the phrase "any other" is broad and subject to no limitation beyond the parenthetical "other than by aircraft"—which, in effect, proves the rule. *Ibid.* Aircraft, like cruise ships, would naturally fall under "any other conveyance" but for the exception. And the exception for aircraft is explained by their coverage under a separate statute, the Air Carrier Access Act (ACAA), 49 U.S.C. §41705 *et seq.* *See infra* Part I(B) (discussing the ACAA). Because no separate statute applies to cruise ships, Title III provides no exception for them.

Because the plain text of "any other conveyance" includes cruise ships, the question then becomes whether to impute an additional limitation—"except those operating under foreign flags"—into the statute. Notwithstanding the statutory text, the court of appeals created just such an exception. But further examination of the ADA demonstrates that Congress had no such intent.

The ADA states that its purpose is "to invoke *the sweep of congressional authority* . . . in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. §12101(b)(4) (emphasis added). By its terms, this statement is "the affirmative intention of the Congress clearly expressed," *Benz*, 353 U.S., at 147, to apply the ADA in every context in which Congress has the power to do so and in which it has not already provided Americans with disabilities with other forms of protection. *See* 42 U.S.C. §12101(b)(1) (stating that the ADA was intended to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"); *infra* Part I(B) (discussing the Air Carrier Access Act, which provides non-ADA protection to Americans with disabilities who travel on air carriers).

Under the general heading of "Public Accommodations and Services Operated by Private Entities," Title III addresses some of the "major areas of discrimination" referred to in Congress's statement of the ADA's purpose, and NCL does not dispute that cruise ships fall within the meaning of both "public accommodation" and "specified public transportation service," as Title III defines those terms. 42 U.S.C. §12181(7), (10); *Spector*, 356 F.3d, at 644 n.3; *see Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1240 n.3 (CA11 2000). In the judgment of the court of appeals, however, this language is insufficiently specific to encompass foreign ships. *See Spector*, 356 F.3d, at 646 (basing the Court's ultimate conclusion partly on the absence of specific

mention of foreign-flag cruise ships in the language of the ADA). But even if Title III's language leaves any doubt about its coverage of cruise ships, case law, legislative history, and the opinions of two federal agencies resolve it.

2. The Court's precedent supports Petitioners' reading of Title III's scope.

The Court has made clear that Congress need not refer specifically to foreign-flag ships in order to invoke its authority over them. In *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 126 (1923), the Court reasoned that because the National Prohibition Act stated no exception precluding its application to foreign ships that sailed in United States waters, a conclusion that it failed to reach such ships "would tend to embarrass its enforcement and to defeat the attainment of its obvious purpose, and therefore cannot reasonably be regarded as implied." The court of appeals attempted to distinguish *Cunard* on the ground that this case, supposedly unlike *Cunard*, involves "the possibility of extraterritorial application" of federal law. *Spector*, 356 F.3d, at 648. But as explained below in Part III(A), because Petitioners expressly limit their claims to enforcement of Title III within American territorial waters and on American soil, any concern about extraterritorial application of its protections is misplaced.

In *Steele v. Bulova Watch Co.*, 344 U.S. 280, 284 (1952), the Court addressed a federal trademark law applicable to "all commerce which may lawfully be regulated by Congress." Although the *Steele* Court acknowledged that federal law generally does not apply beyond the United States' borders, *id.*, at 285—and thus could arguably not reach a United States citizen's act of trademark infringement in a foreign country, *id.*, at 281—it nevertheless concluded that the federal statute applied based not only on its "broad jurisdictional grant" and its "sweeping reach into 'all commerce which may lawfully be regulated by Congress,'" *id.*,

at 286-87, but also in light of the effects that the allegedly unlawful conduct would have in this country. *Id.*, at 286. Thus, the Court's precedent clarifies that statutory language like Title III's is broad enough to encompass foreign ships and that specific reference to foreign ships is unnecessary. *See Stevens*, 215 F.3d, at 1241.

By contrast, *Benz* and *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963), the opinions on which the court of appeals based its conclusion, are inapposite. Both cases deal with statutes that do not reflect nearly so comprehensive an intent to protect American citizens as that expressed in 42 U.S.C.§12101(b), and, as addressed below in Part II(B), they involve matters touching on a "delicate field of international relations," *Benz*, 353 U.S., at 147, not implicated by Petitioners' claims in this case.

3. The relevant legislative history supports application of Title III to foreign-flag cruise ships.

Although the ADA's stated purpose of setting forth a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and invoking "the sweep of congressional authority" to do so, 42 U.S.C. §12101(b)(1), (4), should make reference to the statute's legislative history unnecessary, that history supports Title III's application to foreign ships. Reports from both the United States Senate and House of Representatives reflect Congress's intent that the particular "public accommodations" noted in 42 U.S.C. 12181 are merely illustrative and that the "other similar" language used throughout that section "should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities." S. REP. NO. 101-116, at 60 (1989); *see also* H.R. REP. 101-485(II), at 100 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 383 (same).

In light of Congress's recognition that, at the time the ADA was passed, seventy-five of the seventy-seven cruise ships in operation sailed under foreign flags, H.R. REP. NO. 102-357, at 2 (1991), the conclusion that Congress intended to exclude foreign-flag cruise ships sailing in American waters from Title III's purview is untenable. Congress's expressed intent is inconsistent with a desire to reach only two ships. The court of appeals's reliance on the *Benz* Court's inability to find sufficient "legislative history evincing Congress's intent to apply the [Labor Management Relations Act of 1947] to foreign-flagged vessels," *Spector*, 356 F.3d, at 645 (citing *Benz*, 353 U.S., at 143-47), is therefore misplaced.

4. Two federal agencies recognize that Title III applies to foreign-flag cruise ships.

Finally, opinions from two United States agencies support the conclusion that Title III covers foreign-flag cruise ships. In 1991, DOJ opined that "mobile facilities (such as cruise ships. . .) . . . would be included in the definition of 'facility'" and would be considered places of public accommodation for purposes of Title III. 28 C.F.R. pt. 36, App. B, at 587. Referring to this DOJ opinion, DOT's final rule implementing the transportation provisions of the ADA declared: "In addition to being public accommodations, cruise ships clearly are within the scope of a 'specified public transportation service'" under Title III. 56 Fed. Reg. 45,584, 45,600 (Sept. 6, 1991). DOT used this same rule to "make . . . clear its view that the ADA does cover passenger vessels, including . . . cruise ships" and noted that "[v]irtually all cruise ships serving U.S. ports are foreign-flag vessels." *Ibid.*; *see Stevens*, 215 F.3d, at 1243.

In concluding that Title III does not apply to NCL's ships, the court of appeals pointed to DOJ's and DOT's failure to issue barrier-removal regulatory guidelines applicable specifically to cruise ships. *Spector*, 356 F.3d, at 650 n.10. But in light of both

Title III's "readily achievable" safeguard against its own unreasonable application, *see infra* Part III(A), and the diverse nature of Petitioners' Title III claims—only some of which relate to architectural issues aboard NCL's ships, *see infra* Part II(C)—the absence of barrier-removal guidelines does not support the conclusion that Title III is wholly inapplicable to foreign-flag cruise ships and their companies' activities on American soil.

B. The Absence of a Separate Federal Statute Preventing Disability-Based Discrimination in the Cruise-Ship Industry Further Supports Title III's Applicability.

If Congress had intended such a popular mode of vacation travel as international cruises to be free from Title III's reach, it would have ensured that Americans with disabilities were protected from discrimination through other federal law, precisely as it did when it passed the ACAA to prohibit air carriers' discrimination against people with disabilities. 49 U.S.C. §41705; *see Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1332 (CA11 2004) (observing that "airplanes and their accompanying terminals and depots" are subject to the ACAA instead of Title III).

The exception of aircraft in §12181(10), *see supra* Part I(A)(1), makes sense only in light of the ACAA's existence. S. REP. 101-116, at 46 (1989) (to accompany S. 933) (explaining that the Education and Labor Committee "excluded transportation by air because the Congress recently passed the Air Carrier Access Act, which was designed to address the problem of discrimination by air carriers"); H.R. REP. 101-485(I) (1990), *reprinted in* 1990 U.S.C.C.A.N. 267, 280 (similar statement by House Committee on Public Works and Transportation); H.R. REP. 101-485(II) (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 369 (similar statement by House Committee on Education and Labor).

Nothing in either the ADA or its legislative history excludes cruise ships from Title III's reach. Indeed, the broad definition of

"specified public transportation"—especially when read in conjunction with the opening provisions of the ADA announcing Congress's intent to exercise the sweep of its authority to protect Americans with disabilities, 42 U.S.C. 12101(b)—leaves little doubt that Congress intended Title III to protect Americans with disabilities from discrimination by cruise-ship companies and aboard their vessels.[3]

Unlike citizens with disabilities who travel by air, those who take cruise-ship vacations have no comprehensive federal-law protection against disability-based discrimination other than Title III. Although it remains an open question whether Texas Human Resources Code chapter 121 and other similar state statutes, the protections of which largely parallel those of Title III, apply aboard foreign-flag cruise ships, *see Spector v. Norwegian Cruise Line Ltd.*, No. 01-02-00017-CV, 2004 WL 637894, at *9 & n.20 (Tex. App.—Houston [1st Dist.] 2004, no pet. hist.), there is nothing to indicate that Congress—especially in light of its far-reaching purpose in enacting the ADA—decided to rely on the States to fill the void of protection that would exist if Title III did not reach the

3. After the ACAA's passage, several district courts held that ACAA claims are preempted by the Warsaw Convention. *See, e.g., Turturro v. Cont'l Airlines*, 128 F.Supp.2d 170, 180 (S.D.N.Y. 2001) (explaining that, although Congress amended the ACAA to cover foreign air carriers, the amendment was subject to 49 U.S.C. §40105(b), which prevents violation of the Warsaw Convention and other international agreements); *Waters v. Port Auth. of N.Y. & N.J.*, 158 F.Supp.2d 415, 429-30 (D.N.J. 2001) (following *Turturro* to hold that the Warsaw Convention preempts ACAA claims). But because the Warsaw Convention applies exclusively to claims arising from international air transportation, *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 169 (1999), it has no relevance to the question of whether Title III applies aboard foreign-flag cruise ships sailing in United States waters or to their owners' selling tickets on United States soil.

vast majority of cruise ships that sail under foreign flags. H.R. REP. No. 102-357, at 2 (1991) .

II. TICKET PRICING AND THE ACCESSIBILITY AND SAFETY OF FOREIGN-FLAG CRUISE SHIPS ARE NOT MATTERS GOVERNED EXCLUSIVELY BY THE LAW OF THE SHIP'S HOME COUNTRY.

In reaching its conclusion about the scope of Title III, the court of appeals applied a presumption against application of United States law based on its conclusion that recognizing the protections of Title III in this case would infringe upon the "internal management and affairs" of foreign-flag ships. *Spector*, 356 F.3d, at 649. This conclusion is insupportable for three reasons.

First, the opinions that the court of appeals relied upon deal with the narrow subject of relations between commercial ships' labor and management, not the physical safety of fee-paying passengers. Second, and relatedly, even if the conduct of NCL that Petitioners seek to regulate could be construed as touching on ships' internal management and affairs, it does not implicate the "delicate field of international relations" that the Court has been appropriately reluctant to disturb through the application of federal labor law aboard foreign-flag ships. And third, even if this Court were to conclude that *some* of Petitioners' Title III claims relate to the internal affairs of NCL's ships, others unquestionably do not. At the very least, the court of appeals applied the presumption against application of United States law too broadly.

A. Petitioners' Title III Claims Differ in Kind from the Type of Claims That Implicate the Internal Management and Affairs of Foreign-Flag Ships.

The court of appeals failed to recognize the narrow, specialized meaning that this Court has attributed to the "internal management and affairs" of a ship. The Court's opinions have tied the phrase to

the specific context of labor relations between a ship's management and its crew. Petitioners' claims fall outside of this narrow context.

The court of appeals cited *McCulloch*, 372 U.S., at 20, for the presumption that the law of the flag state—rather than federal law—governs a foreign ship's internal affairs. *Spector*, 356 F.3d, at 649. *McCulloch*, in turn, cites *Wildenhus's Case* (*Mali v. Keeper of the Common Jail of Hudson County, N.J.*), 120 U.S. 1, 12 (1887), as support for this principle. 372 U.S., at 20. But like *McCulloch*, which dealt with whether the National Labor Relations Act could apply to the maritime operations of a foreign ship that employed a foreign crew, *id.* at 12, *Wildenhus's Case* had nothing to do with the treatment of passengers aboard a common carrier; rather, it addressed whether, under a treaty between the United States and Belgium, a Belgian counsel was entitled to a writ of habeas corpus granting the release, from a New Jersey jail, of a Belgian subject charged with murder aboard a Belgian ship docked at a New Jersey port. 120 U.S., at 2, 11. As the *Wildenhus's Case* Court explained,

> "it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the *rights and duties of the officers and crew towards the vessel, or among themselves*. And so by comity it came to be generally understood among civilized nations that *all matters of discipline*, and all things done on board, *which affected only the vessel, or those belonging to her*, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation, or the interests of its commerce should require." *Id.*, at 12 (emphasis added).

Wildenhus's Case nevertheless concluded that murder, even when it took place aboard a foreign ship and out of the American public's view, was a crime of such magnitude—and one likely to attract such domestic publicity—that it could not fall within the category of matters relating to the on-board "maintenance of order and discipline" over which the Belgian consul's authority extended. *Id.*, at 16, 19. The Court illustrated the difference between matters governed by the flag-state's law and those governed by federal law by reference to the shoreside effect that an unlawful act committed aboard a ship would have:

> "If [the act] is of a character to awaken public interest when it becomes known, it is a 'disorder,' the nature of which is to affect the community at large, and consequently to invoke the power of the local government whose people have been disturbed by what was done. . . . Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished, by the proper authorities of the local jurisdiction." *Id.*, at 18.

"[T]he peace of the ship or those on board," *ibid.*, has come to refer specifically to labor-management relations. More recent opinions from this Court that articulate the rule on which the court of appeals relied deal exclusively with attempts to apply federal laws that address employment issues between the owners of foreign-flag ships and their crews. *See, e.g., Int'l Longshoremen's Ass'n v. Allied Int'l, Inc.*, 456 U.S. 212, 221 (1982) (explaining that "[t]he longstanding tradition of restraint in applying the laws of this country to ships of a foreign country—a tradition that lies at the heart of *Benz* and every subsequent decision—. . . is irrelevant" because the boycott at issue involved an "all-American cast" and neither "aim[ed] at altering the terms of employment of foreign crews on foreign-flag vessels" nor sought "to extend the bill of

rights developed for American workers and American employers to foreign seamen and foreign shipowners"); *McCulloch*, 372 U.S., at 20 (refusing to apply the National Labor Relations Act in connection with an American union's attempt to represent unlicensed foreign seamen employed aboard foreign-flag vessels that sailed to American ports, and basing its conclusion partly on "the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship") (citing *Wildenhus's Case*, 120 U.S., at 12); *cf. Stevens*, 215 F.3d, at 1242 (recognizing the narrow meaning of "internal management and affairs").

Indeed, far from a principle broad enough to reach the treatment of fee-paying passengers on vacation cruise ships, the Court's reluctance to allow federal law to apply in settings that will raise delicate issues of international relations does not even extend to all federal law governing labor-management relations. *See Windward Shipping (London) Ltd. v. Am. Radio Ass'n, AFL-CIO*, 415 U.S. 104, 113-14 (1974) (explaining that the picketing of foreign ships undertaken for the benefit of American merchant seamen "do[es] not involve the inescapable intrusion into the affairs of foreign ships that was present in *Benz* and *Incres* [*S.S. Co. v. Int'l Maritime Workers Union*, 372 U.S. 24 (1963)]," because the union at issue sought "neither to organize the foreign crews for purpose of representation nor to support foreign crews in their own wage dispute with a foreign shipowner"); *Int'l Longshoremen's Local 1416 v. Ariadne Shipping Co.*, 397 U.S. 195, 199-200 (1970) (reasoning that no delicate issues of foreign relations were raised by a dispute that "centered on the wages to be paid American residents, who were employed by each foreign ship not to serve as members of its crew but rather to do casual longshore work").

Despite this line of authority's narrow focus, NCL urges the Court to expand "internal management and affairs" beyond well-established boundaries to cover the treatment of fee-paying

American passengers whose specific needs a common carrier had assured would be met. The Court should decline NCL's invitation to broaden this presumption and allow foreign ships to ignore Congress's clear directive.[4]

B. Application of Title III in This Case Raises No "Delicate Issues of International Relations."

Amici States recognize that application of some United States laws to foreign-flag vessels sailing in United States waters may raise difficult issues of international law and affect relations between the United States and other countries. *See, e.g., McCulloch*, 372 U.S., at 16-17 (noting that the National Labor Relation Board's "assertion of power to determine the representation of foreign seamen aboard vessels under foreign flags has aroused vigorous protests from foreign governments and created international problems for our Government").

But each of the opinions that the court of appeals relied on deals with employment issues between ships' managers and crews, not the physical safety of fee-paying vacationers on cruise ships. In *Benz*, for instance, the sailors at issue "agreed in Germany to work on the foreign ship under British articles." 353 U.S., at 146. The delicate international-relations issue arose from the sailors' argument that United States law should apply to resolve a labor dispute between the ship's foreign management and its foreign crew. *Id.*, at 142 (noting that "[t]he only American connection was

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4. Even under this Court's early precedents, Petitioners' claims about their safety aboard NCL's ships fall within Title III's reach. If, for example, a fire broke out on a loaded cruise ship while it was docked at a United States port, and all of the Americans with disabilities aboard perished because the means of emergency evacuation were inaccessible to them, that tragedy would almost certainly "awaken public interest," and most people would assuredly agree that the death-toll would "affect the [American] community at large." *Wildenhus's Case*, 120 U.S., at 18.

that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing); *cf. Ariadne Shipping Co.*, 397 U.S., at 198-200 (finding *Benz* and *McCulloch* inapplicable where foreign vessels employed United States citizens to perform short-term work).

The concern about "delicate issues" that the Court recognized in *Benz* is not present in this case because the rights of American vacationers to safety and freedom from discrimination in connection with cruise travel implicates nothing akin to a labor-management dispute among foreign citizens. *See* 28 C.F.R. pt. 36, App. B, at 611 (explaining that, in light of Title III's purpose of "ensur[ing] that public accommodations are accessible to their customers, clients, or patrons," that statute's protections "do[] not extend to areas of a facility that are used exclusively as employee work areas"); *see also Stevens*, 215 F.3d, at 1241 n.5 (noting that "[o]ther parts of a ship, such as the bridge, the crew's quarters, and the engine room, might not constitute public accommodations" covered by Title III).

McCulloch likewise involved an attempt to apply federal labor law aboard a vessel that "flies the flag of a foreign nation, carries a foreign crew and has other contacts with the nation of its flag." 372 U.S., at 12. Highlighting the specific nature of the "delicate field of international relations" at issue, *id.*, at 21, this Court stated that "the overriding consideration is that the [National Labor Relations] Board's assertion of power to determine the representation of foreign seamen aboard vessels under foreign flags has aroused vigorous protests from foreign governments and created international problems for our Government." *Id.*, at 16-17. To the best of *amici* States' knowledge, no such vigorous protests have arisen, or are likely to arise, against application of laws that merely protect American citizens against discrimination in connection with vacations they take on cruise ships and other common carriers.

C. Alternatively, at Least Some of Petitioners' Title III Claims Could Not Possibly Relate to the Internal Management and Affairs of Foreign-Flag Ships.

In their live complaint, Petitioners alleged several distinct Title III violations. Amended Compl. ¶¶24-34. Although some of those claims relate to onboard procedures that NCL followed when Petitioners embarked on their cruises, others relate exclusively to on-land activities of NCL and architectural barriers aboard the two ships in question. *Id.* ¶¶31, 32. Even if the Court concludes that some of Petitioners' claims relate to the "internal management and affairs" of NCL's ships, these latter two do not.

1. The sale of tickets on United States soil has no connection to the onboard concerns of a ship.

Title III prohibits not only "the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations," 42 U.S.C. §12182(b)(2)(A)(i), but also the utilization of "standards or criteria or methods of administration" that either constitute or perpetuate disability-based discrimination. *Ibid.* §12182(b)(1)(D); *see also* 28 C.F.R. 36.301(c) ("A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part").

At least one of Petitioners' claims alleges the very type of conduct that these portions of Title III address. *See* Amended Compl. ¶32 (alleging that NCL charged Petitioners higher fares

than it charged customers without disabilities and imposed unlawful surcharges). NCL's principal place of business is in Florida, and it routinely does business in Texas. *See id.*, ¶10. Chief among its business activities in Texas and other States is the sale of cruise-ship tickets to prospective American passengers, and Petitioners purchased their tickets to board the cruise ships in question on United States soil. It is thus undisputed that at least one of Petitioners' Title III claims concerns the conduct of NCL on United States land, not its alleged conduct at sea or even the structure or condition of any of its ships.

Yet in determining whether Title III applies, the court of appeals applied the presumption against application of federal law with regard to Title III as a whole, including provisions applicable on United States land. *Spector*, 356 F.3d, at 649 (declaring that "the present case deals with the 'internal management and affairs' of a foreign-flagged ship" and stating that Petitioners' proposed accommodations "would require NCL to adjust evacuation procedures and responsibilities of the crew, and would mandate structural changes to the ships"). At a minimum, this reasoning is overly broad. Because allegedly discriminatory ticket pricing and sales on dry land in no way implicates any of the onboard concerns that the court of appeals's opinion identifies, the court's broad application of the presumption in favor of foreign ships' control over their internal affairs is insupportable.

2. Architectural issues on cruise ships are fundamentally different from the type of internal management disputes that Congress is presumed powerless to regulate.

As noted above in Part II(A), opinions addressing the "internal management and affairs" of foreign-flag ships construe that phrase to be limited to labor-management relations. Even assuming that this line of authority could be extended beyond the labor-law

context to address the more general topic of safety procedures that workers on common carriers follow to protect their passengers from physical harm, it would still not apply to bar Title III's regulation of architectural barriers on cruise ships. Just as the pricing of cruise tickets does not implicate any issues relating to the management of a cruise ship, neither does the presence or absence of physical barriers in cruise-ship architecture implicate any issues involving labor-management relations aboard a ship.

III. APPLICATION OF TITLE III TO FOREIGN-FLAG CRUISE SHIPS IN UNITED STATES WATERS DOES NOT CONSTITUTE EXTRATERRITORIAL APPLICATION OF FEDERAL LAW.

The court of appeals's conclusion that this case raises concerns about the extraterritorial application of federal law, 356 F.3d, at 648, reflects its misunderstanding about the relief sought and the scope of the opinions on extraterritoriality that it cites. Even though the ships at issue sail internationally, Petitioners do not ask this Court to apply Title III outside of United States territory. Their focus is on the pricing of tickets sold on United States soil and conditions and practices aboard NCL's ships within United States waters.

And, to the extent their claims can be read more broadly, an important safeguard against unreasonable application of Title III—the "readily achievable" caveat on Title III's enforcement—eliminates any extraterritorial-application concerns that may remain. Although such concerns could arise in connection with some applications of Title III, that is no reason to conclude that the statute, as a matter of law, is wholly inapplicable to foreign ships.

Furthermore, the opinions about extraterritoriality upon which the court of appeals relied presume that Congress did not intend to apply federal law in specific foreign countries. To read these

opinions as a basis for presuming that federal law cannot reach foreign-flag cruise ships sailing in American waters would circumvent Congress's clear intent and reduce the United States's ability to enforce its laws within its own territory.

A. The Court of Appeals Misunderstood the Scope of Petitioners' Argument and Disregarded a Built-In Safeguard Against Unreasonable Application of Title III.

Petitioners' live complaint notes that, at the times material to their Title III claims relating to their experiences aboard NCL's ships, those ships sailed "within the waters of the United States." Amended Compl. ¶¶13, 15. In the court of appeals and now in this Court, Petitioners have continued to request enforcement of Title III only on United States land and in its territorial waters. *See* 356 F.3d, at 648; Pet., at 16 (stating that "[t]he relevant conduct occurred entirely within the United States' territorial jurisdiction"); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §512 (1987) (explaining that a country's sovereignty over its territorial seas is no less than its sovereignty over its land); *id.* §511 cmt. e (same).

The court of appeals nevertheless viewed this case as posing the question of whether Congress "'place[d] the high seas within the jurisdictional reach'" of Title III, *Spector*, 356 F.3d, at 650 (quoting *Equal Employment Opportunity Comm'n v. Arabian Am. Oil Co.*, 499 U.S. 244, 258 (1991) ("*ARAMCO*")), and raised a concern about the permanence of the architectural alterations to NCL's cruise ships that some portions of Title III would require. *Ibid.*, at 648. Thus, the court suggested that Title III's broad application would have significant extraterritorial effect the moment that one of NCL's Title-III-compliant ships sailed outside of United States waters. *Ibid.* That concern, however, ignores Title III's self-limiting language.

Title III prevents its own enforcement if the particular changes it calls for are not "readily achievable." 42 U.S.C. §12182(b)(2)(A)(iv) (stating that failure to remove architectural and transportation barriers constitutes discrimination within the meaning of Title III only "where such removal is readily achievable"); *id.* §12181(9) (explaining that "[t]he term 'readily achievable' means easily accomplishable and able to be carried out without much difficulty or expense" and listing factors for courts to consider in determining whether an action is readily achievable within the meaning of Title III).

Notwithstanding the express limitations on the geographic scope of Petitioners' claims, the court of appeals based its conclusion partly on the "stark likelihood of conflicts" between the architectural standards that enforcement of Title III would require and those set out in the International Convention for Safety of Life at Sea ("SOLAS"). *Spector*, 356 F.3d, at 647 & n.6. But even assuming that this "likelihood of conflict" between the two sets of standards would result in an actual design conflict (a conclusion even the court of appeals does not reach, *ibid.*), Title III's "readily achievable" safeguard quells concerns about federal law imposing unreasonable requirements on cruise ships that sail internationally.

Moreover, some portions of Title III—such as those preventing discrimination in ticket pricing—raise no concerns whatsoever about the international reach of federal law and consequently may not be displaced to avoid extraterritorial application of Title III. *See supra* Part II(C). But more importantly, no foreign-flag ship is forced to enter United States waters. Like other cruise lines, NCL freely chooses to subject itself to American laws, *Benz*, 353 U.S., at 142—a business decision presumably justified by the substantial profits it earns from American citizens. *See generally* Press Release, Int'l Council of Cruise Lines, Cruise Industry Economic Impact Topped $25 Billion in 2003 (August 24, 2004), *at*

http://www.iccl.org/pressroom/ pressrelease.cfm?whichrel=56 (last visited Nov. 12, 2004).

In short, the broad reach of Title III is appropriately tempered by Congress's recognition of the practical limitations on the changes it theoretically requires. This aspect of the ADA ensures that it will not be applied unreasonably or in ways that conflict with international standards, and it obviates the need for the Court to consider the "thorny regulatory issue" that the court of appeals imagined. *Spector*, 356 F.3d, at 650 & n.10. To prevent enforcement of the readily achievable portions of Title III aboard foreign-flag ships sailing in United States waters simply because other portions of Title III might not be readily achievable would frustrate the expressed will of Congress. *See also supra* Part II(C) (urging that it would be improper to reject all of Petitioners' Title III claims—even those relating to on-land ticket sales and onboard barrier removal—on the ground that a foreign-flag ship retains control over its "internal management and affairs").

B. The Court of Appeals's Reliance on an Opinion Addressing the Application of Federal Law in Overseas Workplaces is Misplaced.

As the *amici* States have already pointed out, the court of appeals failed to recognize that labor-management relations aboard merchant vessels are fundamentally different from vacationers' safety and equal treatment aboard common carriers. *See supra* Part II (explaining why this case neither involves the internal management and affairs of foreign ships nor implicates the "delicate field of international relations" that this Court identified in *Benz* and *McCulloch*). The court of appeals made a similar error in equating foreign-flag vacation cruise ships that carry American passengers with foreign-based American companies that employ American workers.

In reaching its conclusion on the supposed issue of Title III's extraterritorial application, the court of appeals relied heavily on this Court's reasoning in *ARAMCO*. Although *ARAMCO* concerned allegations of discrimination, it did so in a context entirely distinct from the one currently before the Court. *See Stevens*, 215 F.3d, at 1242 (explaining its conclusion that *ARAMCO* is inapposite). In *ARAMCO*, an employee of an American corporation sued his employer for discrimination under Title VII of the Civil Rights Act of 1964 following his discharge from his job at a Saudi Arabian facility. 499 U.S., at 247. After stating background law establishing the presumption against extraterritorial application of federal law, *id.*, at 248, the Court noted that Title VII's "boilerplate 'commerce' language" was dispositively less expansive than another statute's stated application to "all commerce which may lawfully be regulated by Congress." *Id.*, at 252 (quoting *Steele*, 344 U.S., at 284); *see infra* Part I(A)(1) (noting that the key language in the statute at issue in *Steele* corresponds in breadth to the language of 42 U.S.C. §12101(b)).

The Court observed that adopting the employee's position would mean that foreign companies that employed United States citizens would be subject to Title VII—"a result at which even petitioners balk." *ARAMCO*, 499 U.S., at 255. Echoing similar statements in *Benz* and *McCulloch*, the Court noted that extraterritorial application of Title VII "would raise difficult issues of international law by imposing this country's employment-discrimination regime upon foreign corporations operating in foreign commerce." *Ibid.*

Even setting aside the express limitations on the relief that Petitioners seek and assuming that the court of appeals was correct in its conclusion that this case raises an issue of extraterritorial application of federal law, reliance on *ARAMCO* is unjustified. Like *Benz* and *McCulloch*, *ARAMCO* deals with the regulation of relations between employers and their employees—an area in which

this Court has been appropriately reluctant to impose federal laws on employers in foreign countries. Because Petitioners are not seeking enforcement of Title III beyond the limits of United States territory, and because their claims relate to disability-based discrimination against American vacationers boarding cruise ships from American ports and thus implicate no delicate issues of international relations, neither *ARAMCO* nor the other opinions discussing the extraterritorial reach of a federal labor law on foreign soil applies. Rather, the case concerns solely giving effect to Congress's expressed intent to protect the rights of Americans with disabilities traveling on common carriers on American soil and in American waters.

CONCLUSION

The Court should reverse the judgment of the Fifth Circuit Court of Appeals.

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